

CHAPTER 12  
LICENSES AND PERMITS

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## 12.01 GENERAL PROVISIONS.

(1) APPLICATION. Every application for a license or permit required by this chapter shall be made upon a form furnished by the Clerk-Treasurer and verified. The appropriate license or permit fee, together with a publication fee, if any, shall be paid to the Clerk-Treasurer prior to the issuance of a license or permit. No initial license or permit fee shall be refunded unless the granting of the license or permit is denied.

(2) LICENSE ISSUANCE. Licenses, when granted, shall be issued by the Clerk-Treasurer and shall state the date thereof, the day from which it shall be in force, the name and place of business of the person to whom it is issued, the particular purpose and the time period for which issued, and the amount of license fee paid. The Clerk-Treasurer shall keep all such applications on file and keep a record of all licenses issued.

(3) LICENSE TERMINATION. Except as otherwise specifically provided, every license or permit granted under this chapter shall terminate or expire on June 30 of each year.

(4) NO PRORATING OF FEES. Except as otherwise specifically provided by law, no initial license or permit fee shall be prorated.

(5) NO REFUND OF FEES. No license or permit fee shall be refunded if a license or permit is revoked for cause.

(6) TRANSFER OF LICENSES AND PERMITS PROHIBITED. No license or permit may be transferred from the licensee or permittee to another person unless otherwise provided in this Chapter.

(7) SUSPENSION AND REVOCATION OF LICENSES AND PERMITS. Except as otherwise specifically provided, any license or permit granted under this chapter may be suspended or revoked by the Village Board for cause after giving the licensee or permittee an opportunity to be heard, as provided by law.

(8) LICENSE CONDITIONS - NONPAYMENT OF VILLAGE TAXES, CLAIMS, AND UTILITIES.

(a) No license shall be granted or renewed for the operation of any trade, profession, business or privilege, for which a license or permit is required by any provision of this Chapter, for operation upon any premises upon which taxes or assessments or other financial claims of the Village, or of any Village utility are delinquent and unpaid.

(b) No person who is delinquent in the payment of any taxes, assessments or other claims owed to the Village, including a forfeiture resulting from a violation of any ordinance of the Village, shall be granted or renewed any license for any trade, profession, business or privilege in the Village for which a license or permit is required by any provision of this Chapter.

## 12.02 INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES.

(1) INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES (STATE STATUTES ADOPTED). The provisions of ch. 125, Wis. Stats., defining and regulating the sale, procurement, dispensing and transfer of beverages, excluding provisions the violation for which results in a criminal penalty, are adopted and made a part of this section by reference. A violation of any of such provision shall constitute a violation of this section. Any future amendments, revisions or modifications of the statutory regulations in ch. 125, Wis. Stats., incorporated herein are intended to be made part of this code in order to secure to the extent legally practicable uniform statewide regulation of alcohol beverages in the State of Wisconsin.

### (2) LICENSES, PERMITS (AUTHORIZATION REQUIRED).

(a) When Required. No person except as provided by s. 125.06, Wis. Stats., shall within the Village of West Baraboo, serve, sell, manufacture, rectify, brew, or engage in any other activity for which this chapter or ch. 125, Wis. Stats., requires a license, permit, or other authorization without holding the appropriate license, permit, or other authorization as provided in this section. [Ref. Note: s. 125.04(1), Wis. Stats.]

(b) Separate License Required for Each Place of Sale. Except for licensed public warehouses, a license shall be required for each location or premises where intoxicating liquor or fermented malt beverages are stored, sold, or offered for sale.

(3) CLASSES OF LICENSES AND FEES. The following classes and denominations of licenses may be issued by the Village Clerk under the authority of the Village Board after payment of the fee herein specified, which license when so issued shall permit the holder to sell, deal, or traffic in alcohol beverages as provided in ss. 125.17, 125.25, 125.26, 125.28, 125.51 and 125.57, Wis. Stats. Except as otherwise provided in this section, the full license fee shall be charged for the whole or fraction of any year.

(a) Class "A" Fermented Malt Beverage Retailer's License. Class "A" fermented malt beverage retailer's licenses shall be issued by the Village Board and signed by the Village Clerk. The fee for such license shall be \$100.00 per year.

(b) Class "B" Fermented Malt Beverage Retailer's License. Class "B" fermented malt beverage retailer's license shall be issued by the Village Board and signed by the Village Clerk. The fee for a Class "B" license shall be \$100.00 per year.

1. Class "B" licenses may be issued at any time for six (6) months in any calendar year, for which three-fourths of the applicable license fee shall be paid; but such license shall not be renewable during the calendar year in which issued.

2. Class "B" licenses may also be issued to bona fide clubs, state, county, or local fair associations or agricultural societies, lodges, or societies that have been in existence for at least six (6) months before the date of application and posts of the veterans' organizations authorizing the sale of fermented malt beverages at a particular picnic or similar gathering, at a meeting of the post, or during the fair conducted by the fair association or agricultural society. A license issued to the county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of fermented malt beverages from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of fermented malt beverages from the stands while the fair is being held. No such person is required to obtain an operators' license in order to engage in retail sales of fermented malt beverages on the grounds of fairs receiving state aid. The fee for such a license shall be \$10.00. [Ref. Note: s. 125.26(6), Wis. Stats.]

(c) Wholesaler's Fermented Malt Beverage License. Wholesaler's fermented malt beverage licenses shall be issued by the Village Board and signed by the Village Clerk. The fee for such a license shall be \$25.00 per year or a fractional part thereof. [Ref. Note: s. 125.28, Wis. Stats.]

(d) Retail "Class A" Liquor License. Retail "Class A" liquor licenses shall be issued by the Village Board and signed by the Village Clerk. The fee for such a license shall be \$500.00 per year. [Ref. Note: s. 125.51(2), Wis. Stats.]

(e) Retail "Class B" Liquor License. Retail "Class B" liquor licenses shall be issued by the Village Board and signed by the Village Clerk. A Retail "Class B" liquor license shall permit the holder thereof to sell intoxicating liquor in the original package or container, in multiples not to exceed four (4) liters at any one time to be consumed off the licensed premises. Wine may be sold for consumption off the premises in the original package or otherwise in any quantity. The fee for such a license shall be \$400.00 per year. In addition, the initial issuance fee for a reserve "Class B" license shall be \$10,000. [Ref. Note: s. 125.51(3)(e), Wis. Stats.]

1. Retail "Class B" liquor licenses may be issued after July 1 in any license year. The license shall expire on the following June 30th. The license fee shall be prorated according to the number of months or fractions thereof remaining until the following June 30th.

2. Retail "Class B" liquor licenses valid for six (6) months may be issued at any time. The fee for the license shall be 50% of the annual license fee. The license may not be renewed during the calendar year in which issued.

(f) Pharmacist's License. Pharmacist's licenses shall be issued by the Village Board and signed by the Village Clerk. The fee for such a license shall be \$10.00 per year. [Ref. Note: s. 125.57, Wis. Stats.]

(g) Operators' Licenses. Operators' licenses shall be issued by the Village Board and signed by the Village Clerk and shall be granted to individuals for the purposes of complying with ss. 125.32(2) and 125.68(2), Wis. Stats. Operators' licenses may be issued only on written application on forms provided by the Village Clerk. Operators' licenses shall be valid for a maximum period of one (1) year and shall expire on June 30th of each year. The fee for such a license shall be \$25.00 for the first year and \$10.00 per year for each consecutive year renewal thereafter.

#### (4) LICENSE APPLICATION.

(a) Form. Application for a license to sell or deal in intoxicating liquor or fermented malt beverages shall be made in writing on forms prescribed by the State Department of Revenue, or, in the case of operators' licenses, on forms prescribed by the Village of West Baraboo, and filed with the Village Clerk. The premises shall be physically described, including every room and storage space to be covered by the license and including all rooms joined by connecting entrances where not separated by a solid wall.

(b) Application to be Notarized. Applications shall be signed and sworn to by the applicant as provided by s. 887.01, Wis. Stats.

(c) Duplicate. Upon approval, a duplicate copy of each application shall be forwarded by the Village Clerk to the State Department of Revenue.

#### (5) LICENSE RESTRICTIONS. [Ref. Note: s. 125.51, Wis. Stats.]

(a) Statutory Requirements. Licenses shall be issued only to persons eligible therefor under ss. 125.04 and 125.33(3)(b), Wis. Stats. In addition, no license of

any type described in this chapter shall be issued to any person or persons who is not satisfactory to the Village Board with respect to character, record and reputation.

(b) Location.

1. No retail "Class A" or "Class B" license shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital, or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church, or hospital to the main entrance to the premises covered by the license.

2. The foregoing s. 12.05(b)(1) shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school building, hospital buildings, or church building.

(c) Violators of Liquor or Beer Laws or Ordinances. No retail license referred to in this chapter shall be issued to any person who has been convicted of a violation of any federal or state liquor or fermented malt beverage law or the provisions of this chapter during one year prior to such application. The conviction of a member of a partnership or the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.

(d) Health and Sanitation Requirements. No retail Class "B" or "Class B" license shall be issued for any premises which do not conform to the sanitary, safety, and health requirements of the State Department of Industry, Labor and Human Relations pertaining to buildings and plumbing, to the rules and regulations of the State Department of Health and Social Services applicable to restaurants and to all ordinances and regulations adopted by the Village of West Baraboo.

(e) License Quota. The number of persons and places that may be granted a retail "Class B" liquor license under this section is limited as provided in s. 125.51(4), Wis. Stats.

(f) Corporations. No license shall be granted to any corporation when more than 50% of the voting stock interest, legal interest, or beneficial interest is held by any person or persons not eligible for a license under this section.

(g) Age Requirement. No license under this chapter shall be granted to any person under 19 years of age.

(h) Effect of Revocation of License. Whenever any license has been revoked, at least six (6) months from the time of such revocation shall elapse before another license shall be granted for the same premises and twelve (12) months shall elapse before another license shall be granted to the person whose license was revoked.

(i) Delinquent Local and State Taxes, Assessments, and Claims. No license shall be granted or renewed under this chapter or under ch. 125, Wis. Stats., for any premises for which taxes, assessments, or other claims of the Village of West Baraboo are delinquent and unpaid, or to any person delinquent in payment of any taxes, assessments or other claims owed to the Village of West Baraboo, or any person delinquent in payment of a forfeiture resulting from a violation of any ordinance of the Village of West Baraboo, or any person delinquent in payment to the State of Wisconsin of any state taxes owed.

(j) Issuance for Sales in Dwellings Prohibited. No license shall be issued to any person for the purpose of possessing, selling or offering for sale any alcohol beverages in any dwelling, house, flat, or residential apartment.

(6) **FORM AND EXPIRATION OF LICENSES.** All licenses shall state clearly the specific premises for which granted, the date of the issuance, the fee paid, and the name of the licensee and, unless sooner revoked, shall expire on June 30th thereafter except as otherwise provided. The Village Clerk shall affix his or her affidavit to the license as required by s. 125.04(4), Wis. Stats.

(7) **TRANSFER OF LICENSES.**

(a) Person to Person. No license shall be transferable by a licensee except as provided by s. 125.04(12), Wis. Stats.

(b) Place to Place. Licenses issued pursuant to this section may be transferred from place to place as provided by s.125.04(12), Wis. Stats. Application for such transfer shall be made on blanks furnished by the State Department of Revenue. Proceedings for transfer shall be had in the same manner and form as the original application.

(8) **POSTING AND CARE OF LICENSE.** Every license or permit required under this chapter shall be framed and posted and at all times displayed as provided in s. 125.04(10), Wis. Stats. No person shall post such license or permit any other person to post it upon premises other than those mentioned in the application or knowingly deface or destroy such license, or remove the same without permission of the license holder. Whenever a license shall be lost or destroyed without fault on the part of the holder or his or her employees, a duplicate in lieu thereof under the original application shall be issued

by the Village Clerk on satisfying himself or herself as to the facts and upon the payment of a fee of \$1.00.

(9) CLOSING HOURS. No premises for which an alcohol beverage license has been issued shall remain open for the sale of alcohol beverages:

(a) If a wholesale license, between 5:00 p.m. and 8:00 a.m., except on Saturday when the closing hour shall be 9:00 p.m.

(b) If a Class "A" license, between 12:00 a.m. and 8:00 a.m. on all days of the week.

(c) If a "Class A" license, between 9:00 p.m. and 8:00 a.m. on all days of the week.

(d) If a retail Class "B" or "Class B" license, between 1:00 a.m. and 8:00 a.m. on all days, except during that portion of each year when the standard of time is advanced under s. 175.095, Wis. Stats., when the closing hours shall be between 2:00 a.m. and 8:00 a.m. on all days and except on January 1 of each year when the closing hour shall be between 3:00 a.m. and 8:00 a.m. Between 12:00 a.m. and 8:00 a.m. on all days of the week, no person may sell fermented malt beverages on Class "B" licensed premises in the original unopened package, container or bottle or for consumption away from the premises.

(e) Hotels and restaurants the principal business of which is the furnishing of food or lodging to patrons, and bowling alleys and golf courses, may remain open for the conduct of their regular business, but no intoxicating liquors or fermented malt beverages shall be sold during prohibited hours.

(10) REVOCATION AND SUSPENSION OF LICENSES.

(a) Procedure. Whenever the holder of any license under this chapter violates any portion of this chapter, proceedings for the revocation or suspension of such license may be instituted in the manner and under the procedure established by s. 125.12, Wis. Stats., and the provisions therein relating to granting a new license shall likewise be applicable.

(b) Automatic Revocation.

1. Any license issued under the provisions of this chapter shall stand revoked without further proceedings on the conviction of a licensee or employee, agent or representative thereof for a second offense under this chapter or for a violation of



ch. 125, Wis. Stats., and ch. 139, Wis. Stats., or any other state or federal liquor or fermented malt beverage laws.

2. Cessation of Operations. If any licensee shall suspend or cease doing business for six consecutive months or more, his Class B intoxicating liquor license and fermented malt beverage license shall be subject to revocation by the Board after a public hearing. The Board may, for good cause shown, extend such six month period.

(c) Effect of Revocation. The effect of a revocation under this section shall be the same as set forth in s. 12.05(h) of this Ordinance.

(11) NONRENEWAL OF LICENSES. Before renewal of any license issued under this chapter is refused, the licensee shall be given written notice of any charges or violations or the reasons proposed for nonrenewal and a copy of any proposed motion for nonrenewal and shall have an opportunity to be heard before the Village Board.

(12) LICENSEE ACCOUNTABLE FOR VIOLATIONS BY AGENTS AND EMPLOYEES. A violation of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee. [Ref. Note: s. 125.12(3), Wis. Stats.]

(13) ADDITIONAL CONDITIONS: ADDITIONAL CONDITIONS, REGULATIONS AND PROHIBITIONS. In addition to all other conditions of these ordinances and subject to all other ordinances and regulations of the Village of West Baraboo applicable thereto, all classes of licenses granted, issued, or renewed hereunder shall be granted, issued, or renewed subject to the following conditions, regulations, and prohibitions:

(a) Consent to Entry, Search and Seizure. Every applicant procuring a license consents to the entry of police or other duly authorized representatives of the Village of West Baraboo at all reasonable hours for the purpose of inspection and search, and consents to the removal from said premises of all things and articles there had in violation of city ordinances or state law, and consents to the introduction of such things and articles in evidence in any prosecution that may be brought for such offenses.

(b) Unobstructed View; Maximum Height of Booth Backrests Restricted. The windows and doors of all premises on which a "Class B" or Class "B" liquor license is held, shall be unobstructed by screens, partitions, blinds, plants, curtains, shades, advertising material, paint, or other articles or substances and shall be kept in such condition at all times so as to permit a clear and unobstructed view of all of the interior of said premises from the outside. Backrests of booths shall not exceed a maximum height of 30 inches from the seat to the top of the booth.

(c) Proper Lighting. All licensed premises shall be at all times, when opened to the public, clearly and sufficiently lighted by proper illuminating fixtures.

(d) Band Music One Hour Before Closing Prohibited. It shall be unlawful for the owner, licensee, or operator of any premises licensed under this section to furnish or have on said premises any orchestra or persons playing musical instruments for the purpose of dancing later than one hour before the official closing time for said licensed premises.

(e) Obscene Entertainment Prohibited. No retail licensee for on-premises consumption shall allow or permit any person to appear on licensed premises in such manner or attire as to expose to view any portion of the buttocks, anus, pubic area, vulva, or genitals, or any simulation thereof, nor allow or permit any female, transsexual, or transvestite to appear on licensed premises in such manner or attire as to expose to view any portion of the breast below the top of the aureole, or any simulation thereof, nor allow or permit any act or acts which simulate sexual intercourse, masturbation, sodomy, flagellation, erotic touching, bestiality, oral copulation or any sexual acts prohibited by Wisconsin Statutes.

(f) Loud Noise Prohibited.

1. It shall be unlawful for any licensee or operator of any premises licensed under this chapter or ch. 125, Wis. Stats., to permit or allow the use or operation of sound amplifying equipment on the licensed premises in such manner that the sound emanating from said equipment through any open window, open doorway, or other opening of the licensed premises is unreasonably loud so as to disturb the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

2. In this section, "sound amplifying equipment" shall mean any machine or device for any amplification of the human voice, music, or any other sound.

(g) Premises to be Promptly Vacated at Closing Hour. No alcohol beverage shall be sold or consumed upon any licensed premises after the official closing hour for said licensed premises, and said premises shall be promptly vacated at such closing hour by all persons except the owner and regular employees of the licensed premises, except that licensed premises, whose principle business is the furnishing of some other commodity or services, may remain open during such closing periods solely for the furnishing of such other commodity or services, provided that all intoxicating liquor contained in such premises be placed in padlocked cases promptly at the closing hour and be kept padlocked during official closed hours.

(14) ALCOHOL BEVERAGES; SALE, POSSESSION OR DRINKING IN PUBLIC PLACES.

(a) It shall be unlawful to sell, serve, vend, deal or traffic or offer to sell, serve, vend, deal or traffic any alcohol beverage upon any public place, or from a motor vehicle or other vehicle when the vehicle is on a public place in the Village of West Baraboo.

(b) No person shall drink alcohol beverages upon any public place within the Village of West Baraboo.

(c) No person shall possess upon any public place within the Village of West Baraboo any open container which contains any alcohol beverage.

(d) No person shall drink alcohol beverages while in or on any motor vehicle, motorcycle or other vehicle when the vehicle is upon a public place within the Village of West Baraboo.

(e) No person shall possess while in or on any motor vehicle, motorcycle or other vehicle when the vehicle is upon a public place within the Village of West Baraboo, any open container which contains any alcohol beverages.

(f) The owner of any motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept, in the motor vehicle when it is upon a public place within the Village of West Baraboo any open container which contains any alcohol beverages. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

(g) It shall be unlawful for any person, firm or corporation, to whom a license has been granted pursuant to this chapter or ch. 125, Wis. Stats. to permit any person to leave the licensed premises with any open container which contains any alcohol beverage.

(h) In this section, the following shall apply:

1. "Public place" means any street, public tree bank, public parking lot, or public sidewalk.

2. "Container" means any glass, cup, can, bottle or other receptacle of any kind.

3. A bottle, can or receptacle shall be considered open if the same has been or is opened, the seal has been broken, or the contents thereof have been partially removed.

(i) Any person, firm or corporation violating any of the provisions of this section shall, upon conviction, be subject to a forfeiture of not more than \$500.00 for each offense, provided, however, that in the event that proceedings are commenced against a minor for a violation of this ordinance, the provisions of ss. 48.17(2) and 48.343, Wis. Stats., shall be applicable.

(15) LICENSE REQUIRED IN PUBLIC PLACE; EXCEPTIONS. No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings, and parks owned by counties, regularly established athletic fields and stadiums, school buildings, churches, or clubs.

(16) POSSESSION OF ALCOHOL BEVERAGES ON SCHOOL GROUNDS PROHIBITED. [Ref. Note: s. 125.09(2), Wis. Stats.]

(a) Definitions. In this section:

1. "Motor vehicle" means a motor vehicle owned by, rented by, or consigned to a school.

2. "School" means a public, parochial, or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.

3. "School administrator" means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

4. "School premises" means premises owned, rented or under the control of a school.

(b) Except as provided by subsection (c) no person may possess or drink alcohol beverages:

1. On school premises;
2. In a motor vehicle, if a pupil attending the school is in the motor vehicle; or
3. While participating in a school-sponsored activity.

(c) Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws and ordinances.

(d) Any person who violates this section shall forfeit not more than \$200.00 except that disposition in proceedings against a person under eighteen (18) years of age shall be as provided by s. 48.344, Wis. Stats.

(17) PENALTIES. Any person who violates any provision of this chapter for which a specific penalty is not provided, shall forfeit not more than \$500.00 and pay the costs of prosecution. Any license or permit issued to a person under this chapter may be revoked or suspended by the Court.

#### 12.03 CIGARETTE RETAILER'S LICENSE.

(1) LICENSE REQUIRED. No person shall sell cigarettes in the Village without first obtaining a license from the Clerk-Treasurer. The provisions of S. 134.65, Wis. Stats., are hereby adopted and made a part of this section by reference.

(2) LICENSE FEE. The license fee shall be \$5 per year.

#### 12.04 REGULATION AND LICENSING OF DIRECT SELLERS AND SOLICITORS.

(1) REGISTRATION REQUIRED. It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitations within the Village without being registered and licensed for that purpose as provided herein.

(2) DEFINITIONS. In this section, the terms used shall be defined as follows:

(a) Direct Seller. Any person who sells goods or services or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of said person and shall include, but not be limited to, peddlers,

solicitors and transient merchants. For purposes of this section, the acceptance of a "donation" in exchange for goods, or an order for goods, shall be deemed an act requiring compliance with all of the regulatory provisions of this section, including registration and the posting of a bond.

(b) Permanent Merchant. A direct seller who, for at least one year prior to the consideration of the application of this section to said merchant, has continuously operated an established place of business in the Village or has continuously resided in the Village and now does business from his residence.

(c) Goods. Includes personal property of any kind and shall include goods provided incidental to services offered or sold.

(d) Charitable Organization. Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, but shall not include religious organizations.

(3) EXEMPTIONS. The following shall be exempt from all provisions of this section:

(a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.

(b) Any person selling goods at wholesale to dealers in such goods.

(c) Any person selling agricultural products which such person has grown.

(d) Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in the regular course of business.

(e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis and in which the buyer has initiated contact with and specifically requested a home visit by said person.

(f) Any person who has had, or one who represents a company which has had, a prior business transaction such as a prior sale or credit arrangement on other than a one-time basis with the prospective customer.

(g) Any person selling, or offering for sale, a service not connected with the sale or offering for sale of goods.

(h) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.

(i) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk-Treasurer proof that such charitable organization is registered under S. 440.41, Wis. Stats. However, any charitable organization not registered under S. 440.41, Wis. Stats., or which is exempt from that statute's registration requirements shall be required to register under this section.

(j) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the Clerk-Treasurer proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in this Village for at least one year prior to the date complaint was made.

(k) Any religious organization having tax exempt status under S. 401(c)(3) of the United States Internal Revenue Code upon submitting proof thereof to the Clerk-Treasurer.

#### (4) REGISTRATION OR LICENSING.

(a) Applicants for registration or licensing must complete and return to the Clerk-Treasurer a form furnished by the Clerk-Treasurer.

(b) Applicants shall present to the Clerk-Treasurer for examination:

1. A driver's license or some proof of identity as may be reasonably required by the Clerk-Treasurer.

2. A State certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by State authorities.

3. A State health officer's certificate where applicant's business involves the handling of food or clothing, and is required to be certified under State law; such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.

(c) At the time the registration is returned, an investigation fee of \$100 shall be paid to the Clerk-Treasurer to cover the cost of processing said registration. Religious and charitable organizations are exempt from paying said fee. The applicant shall sign a statement appointing the Clerk-Treasurer his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant in the event the applicant cannot, after reasonable effort, be served personally. Upon payment of said fee and the signing of said statement, the Clerk-Treasurer shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in sub. (5)(b) below, or forfeiture as provided in sub. (8) below.

(5) INVESTIGATION; GRANTING OR DENIAL OF LICENSE.

(a) Upon receipt of a completed registration form, the Clerk-Treasurer shall make an investigation.

(b) The Clerk-Treasurer shall refuse to issue a license to the applicant for any of the following reasons:

1. The application contains any material omission or materially inaccurate statement.

2. The applicant was convicted of a crime, statutory violation or ordinance violation within the last 5 years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitation.

3. The applicant failed to comply with any applicable provision of sub. (4)(b) above.

4. If as a result of the investigation required under this section, the applicant's business or character are found to be unsatisfactory, the Clerk-Treasurer shall endorse on said application his disapproval and his reasons for the same and shall notify the applicant that his application was not approved and no license will be issued.

(c) In the event the Clerk-Treasurer shall refuse to issue the applicant a license, the Clerk-Treasurer shall provide that applicant an opportunity to refute said reasons for denial of the license. After the Clerk-Treasurer has made a final determination, he shall either issue the license or provide the applicant with written reasons for refusing to issue the license.



(d) Any person denied application for a license may appeal such action by filing with the Administrative Review Appeals Board within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Administrative Review Appeals Board shall set a time and place for the hearing. Written notice of the time and place of the hearing shall be given to the applicant at least 24 hours prior to the time set for the hearing.

(6) REGULATION OF DIRECT SELLERS.

(a) Prohibited Practices.

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of 9:00 P.M. and 9:00 A.M., except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors," or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable or religious organization direct seller shall specifically disclose what portion of the free donation or the sale price of goods being offered will actually be used for the charitable or religious purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.

3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

(b) Disclosure Requirements.

1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his name, the name

of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.

2. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit of more than \$25, or is a cash transaction, in accordance with the procedure as set forth in S. 423.203, Wis. Stats., and the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of S. 423.203(1)(a), (b) and (c); (2) and (3), Wis. Stats.

3. If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement; the amount paid in advance, whether full, partial or no advance payment is made; the name, address and telephone number of the seller; the delivery or performance date; and whether a guarantee or warranty is provided and, if so, the terms thereof.

(c) Bond. Every applicant who intends to take sales orders and down payments for the later delivery of goods and services and is not a resident of Sauk County, Wisconsin, or who is such a resident and represents a business or organization whose principal place of business is located outside the State of Wisconsin, shall file with the Clerk-Treasurer a surety bond for a term of one year from the date of issuance of license, running to the Village in the amount of \$5,000 with surety acceptable to the Village Attorney, conditioned that the applicant comply with all applicable ordinances of this Village and statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors and transient merchants. Such bond shall guarantee to any citizen of this Village that all money paid as a down payment will be accounted for and applied according to the representations of the seller and that the property purchased will be delivered according to the representations of the seller. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. The surety may, pursuant to a court order, pay the face amount of the bond to the Clerk of Courts in which suit is commenced and be relieved of all further liability.

(7) **RECORDS**. The Clerk-Treasurer shall note any violations of this section on the record of the registrant convicted.

(8) **REVOCATION OF LICENSE**.

(a) Any license issued under this section may be revoked by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for a license, made any fraudulent, false, deceptive

or misleading statement or representation in the course of engaging in direct sales, violated any provision of this section or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

(b) Written notice of the hearing mailed to the seller at the permanent address shown on the registration at least 15 days, or shall be served personally on the registrant at least 72 hours, prior to the time set for the hearing; such notice shall contain the time and place of the hearing and a statement of the facts upon which the hearing will be based.

(9) PENALTY. Any person convicted of violating any provision of this section shall forfeit not less than \$10 nor more than \$200 for each violation plus costs of prosecution. Each violation shall constitute a separate offense.

#### 12.05 REGULATION AND LICENSING OF DOGS.

(1) DEFINITIONS. For purposes of this section, certain words and terms are defined as follows:

(a) Owner. Any person owning, keeping or harboring a dog.

(b) Kennel. Any establishment where dogs are kept for breeding, sale or sporting purposes.

(c) At Large. Any dog shall be deemed to be at large when it is off the property of its owner and not under the control of a competent person.

(d) Restraint. A dog is under restraint within the meaning of this section if it is controlled by a leash, "at heel" beside a competent person and obedient to that person's commands, on or within a vehicle being driven or parked on the streets, or within the property limits of its owner or keeper.

(e) Spayed Female Dog. Any female dog which has been operated upon to prevent conception.

(f) Neutered Male Dog. Any male dog which has been operated upon to prevent conception.

(g) Pound. Any premises designated by the Village Board for the purpose of impounding and caring for all animals found running at large in violation of this section.

(h) Exposed to Rabies. An animal has been exposed to rabies within the meaning of this section if it has been bitten by, or comes in contact with, any animal known to have been infected with rabies.

(2) **ENFORCEMENT.** The Village Board shall cause the provisions of this section to be enforced.

(3) **LICENSING OF DOGS.**

(a) License Required. It shall be unlawful for any person in the Village to own, harbor or keep any dog more than 5 months of age without complying with the provisions of S.S. 174.05 through 174.09, Wis. Stats., relating to the listing, licensing and tagging of the same. There is hereby imposed a Village dog license tax, payable to the Clerk-Treasurer, which includes a dog license tax imposed under S. 174.05(2) and (3), Wis. Stats., in the amount of:

1. \$5 for spayed or neutered dog
2. \$8 for others
3. One-half the license tax for dogs becoming 5 months of age after July 1

per year for all dogs required to be licensed under the Wisconsin Statutes.

(b) Late Fees and Lost License Tag Fees. The Clerk-Treasurer shall assess and collect a late fee of \$5.00 from every owner of a dog 5 months of age or older if the owner failed to obtain a license prior to April 1 of each year or within thirty days of acquiring ownership of a licensable dog, or if the owner failed to obtain a license before the dog reached licensable age. In the event that a metallic license tag issued for a dog shall be lost, the owner may obtain a duplicate tag from the Clerk-Treasurer upon the payment of \$1.00.

(c) Kennel License Option. The owners of kennels may opt to pay a kennel license fee of \$75.00 for a kennel of 12 dogs or less plus \$3.00 for each dog in excess of 12 in lieu of the fees provided in (a), above and the Clerk-Treasurer shall issue tags for each dog owned by the kennel owners. No kennel may be located in a residential district.

(d) Change of Ownership. If there is a change in ownership of a licensed dog or kennel during the license year, the new owner may have the current license transferred to his name upon the payment of a transfer fee of \$1.00.

(e) Transfer Prohibited. No person shall use for any animal a license receipt or license tag issued for another animal.

(4) **RABIES VACCINATION REQUIRED.** It shall be unlawful for any person to keep a dog in the Village which is over 5 months of age and has not received a rabies vaccination as required by S. 95.21(2), Wis. Stats. No dog license shall be issued until a certificate of rabies vaccination issued by a veterinarian has been presented. A rabies vaccination tag shall be attached to the collar of all licensed dogs at all times, except as provided in S. 95.21(2)(f), Wis. Stats.

(5) **DOGS RUNNING AT LARGE AND UNTAGGED DOGS.**

(a) Dogs Running at Large. A dog is considered to be running at large if it is off the premises of its owner and not under the restraint of the owner or some other person as defined in sub. (1)(d) above.

(b) Untagged Dog. A dog is considered to be untagged if a valid license tag is not attached to a collar which is kept on the dog whenever the dog is outdoors unless the dog is securely confined in a fenced area.

(c) Dog Subject to Impoundment. Peace officers shall attempt to capture and restrain any dog running at large and any untagged dog.

(d) Penalties. If the owner of a dog, negligently or otherwise, permits the dog to run at large or be untagged, the owner shall forfeit \$10 plus costs for the first offense, \$30 plus costs for the second offense and each subsequent offense. If the dog is unlicensed, the above penalties shall be doubled.

(6) **VICIOUS DOGS PROHIBITED.**

(a) No person shall harbor or keep a vicious dog within the Village. A dog is deemed to be vicious when it has attacked or bitten any person or when a propensity to attack or bite persons exists and is known or reasonably should be known to the owner. Any vicious dog which is found off the premises of its owner may be seized by any police officer and, upon establishing to the satisfaction of a court the vicious character of such dog, may be destroyed.

(b) Notwithstanding par. (a) above, a police officer may kill or tranquilize a vicious dog if he determines that it is necessary to take such action to prevent real and immediate personal injury to any person, including himself.

(7) DUTY TO REPORT DOG BITE. Every person, including the owner or person harboring or keeping a dog, who knows that a dog has bitten any person, shall immediately report such fact to the Clerk-Treasurer, who shall inform the County Sheriff.

(8) IMPOUNDING AND DISPOSITION OF DOGS. A police officer or other person restraining a dog running at large shall take such dog and hold the same for the County Animal Control Officer.

(9) INVESTIGATION. For the purpose of discharging the duties imposed by this section and to enforce its provisions, any police officer is empowered to enter upon any premises upon which a dog is kept or harbored and to demand the exhibition by the owner of such dog or the license for such dog. It is further provided that a police officer may enter the premises where any animal is kept in a reportedly cruel or inhumane manner and demand to examine such animal and to take possession of such animal when, in his opinion, it requires removal from the premises.

(10) HOWLING DOGS. No person shall own, keep, harbor or have in his possession any dog within the Village which, by frequent or habitual howling, yelping, barking or other disturbing noise, individually or together offend the peace and quiet of persons of ordinary sensibilities, thereby causing a serious disturbance to persons or to the neighborhood. Each day that such a disturbance continues or occurs shall be a separate offense.

(11) NUMBER OF DOGS PER HOUSEHOLD LIMITED. No person, except a kennel licensee, shall own, harbor or keep more than 3 dogs that are more than 5 months of age except in a place or places where animals are impounded or restrained, as specified in this section. If a total of more than 3 dogs are owned, harbored, or kept in or by any one household, the head of the household shall be deemed the person so owning, harboring or keeping such dogs, notwithstanding that the dog license or licenses may be issued to other members of the household as owners of such animals.

(12) PENALTIES. In addition to other penalties provided in this section, the following penalties are imposed.

(a) Failure to Obtain Rabies Vaccination. A dog owner who fails to have a dog vaccinated against rabies, as provided in this section, shall, upon conviction, forfeit not less than \$50 nor more than \$100.

(b) Refusal to Comply With Quarantine Order. An owner of a dog or cat who refuses to comply with an order issued under this section to deliver the animal to a police officer, the County Pound or veterinarian, or who does not comply with the conditions of an order that the animal be quarantined, shall, upon conviction, forfeit not less than \$100 nor more than \$500.

(c) Other Penalties. Any person violating any other provision of this section shall be subject to a penalty as provided in sec. 25.04 of this Code.

## 12.06 JUNK DEALERS.

(1) LICENSE REQUIRED. No person within the Village shall keep, conduct or maintain any building, structure, yard or place for keeping, storing or piling in commercial quantities, whether temporarily, irregularly or continually, or for the buying or selling at retail or wholesale or dealing in any old, used or second hand materials of any kind, including cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper or other metal, furniture, used motor vehicles or the parts thereof, or other article which from its worn condition renders it practically useless for the purpose for which it was made and which is commonly classed as junk, whether with a fixed place of business or as an itinerant peddler, without first having obtained and paid for a license as hereinafter provided. One carrying on the aforesaid business shall be referred to herein as "junk dealer."

(2) EXCEPTION. No license shall be required for the storage of wrecked motor vehicles stored within service garages and filling stations or on any service garage or filling station site provided that not more than 3 wrecked vehicles may be stored on said premises at any one time for a period not exceeding 30 calendar days.

(3) APPLICATION. Application for such license shall be made to the Clerk-Treasurer on a form provided by the Clerk-Treasurer.

(4) LICENSE FEE. The license fee shall be \$25 per year or any fraction thereof, said year to commence on July 1 and end on June 30. In addition, there shall be an investigation and inspection fee of \$100 for the initial license.

(5) INSPECTION REQUIRED. The Clerk-Treasurer shall report such application to the Building Inspector, who shall inspect or cause to be inspected such premises to determine whether it complies with all laws, ordinances, rules and regulations. Said premises and all structures thereon shall be so situated and constructed that the business of junk dealer may be carried on in a sanitary manner, shall contain no fire hazards, and shall be arranged so that thorough inspection may be made at any time by the proper health, fire and police authorities.

(6) **REFERRAL TO VILLAGE BOARD.** The application for an initial license shall be referred to the Village Board which may grant, grant with conditions, or deny the license.

(7) **OPERATIONAL REQUIREMENTS.** Each licensee shall comply with the following operational requirements:

(a) **Fencing.** Each junk yard shall be entirely enclosed with a cyclone-type fence or tight board fence not less than 8 feet in height. Such fence shall be built and maintained in a substantial manner and painted in a uniform color. No signs shall be posted on said fence, and any signs illegally posted shall be removed. The storage of any junk outside the fenced area is prohibited.

(b) **Setback and Yard Requirements.**

1. **Setback.** The junk yard setback for fencing shall be 100 feet from the centerline of any street or highway, except where 50% or more of the area buildings have an average setback of more or less than said 100 feet, no fence shall be constructed within the average setback line so established; provided that in no event shall the fence be constructed within 25 feet of the street or highway right of way.

2. **Side Yards.** The minimum side yards shall be 4 feet.

(c) **Off-street Parking.** The licensee shall construct 200 square feet of hard-surfaced off-street parking space and adequate access to a public street or alley.

(d) **Property Maintenance.** The licensee shall cut all noxious weeds and take all necessary means to exterminate rats and other vermin.

(8) **REVOCATION.** Upon complaint being made in writing by any resident or any official of the Village to the Village Board that any licensee hereunder has violated any of the provisions of this section, the Board shall summon such licensee to appear before it at the time specified in the summons, which shall be not less than 10 days after the date of the service thereof, to show cause why his license shall not be revoked or suspended. The Board shall thereupon proceed to hear the matter and if it finds that the allegations of said complaint are true, may revoke or suspend the license of such person. The provisions hereunder shall not be effective unless the licensee has received notice from the Building Inspector that a complaint has been filed with the Board as to the operation of his premises and such licensee has been given a reasonable time to correct the condition complained of or to otherwise satisfy such complaint.



12.07 MOBILE HOMES AND MOBILE HOME PARKS.

(1) STATE STATUTES ADOPTED BY REFERENCE. The provisions of S. 66.058, Wis. Stats., and the definitions therein are hereby adopted by reference.

(2) PARKING OUTSIDE LICENSED MOBILE HOME PARKS RESTRICTED. No occupied mobile home shall be permitted to be located in the Village unless the same is in a licensed mobile home park, except those mobile homes legally occupied outside of a mobile home park on or before the enactment of this section, which right to occupy ceases when the present mobile home is removed from the premises.

(3) MOBILE HOME PARKS.

(a) License Required. No person shall establish or operate upon property owned or controlled by him within the Village a mobile home park without having first secured a license therefor from the Village Board.

(b) Mobile Home Park Fee. The mobile home park fee shall be \$25 per year for 50 units or fraction thereof. The transfer fee shall be \$10.

(c) Additions to Parks. Licensees of mobile home parks shall furnish information to the Clerk-Treasurer and Assessor on such homes added to their park within 5 days after their arrival on forms furnished by the Clerk-Treasurer.

(4) PARKING PERMIT FEES. There is imposed on each nonexempt mobile home located in the Village a parking permit fee, such amount to be determined in accordance with S. 66.058, Wis. Stats. The fees shall be paid to the Clerk-Treasurer on or before the 10th day of the month following the month for which they are due. It shall be the full and complete responsibility of the licensee of a mobile home park to collect such fees from each nonexempt mobile home therein and to remit such fees to the Clerk-Treasurer. Failure to do so is to be treated like a default in payment of personal property taxes and subject to all procedures and penalties applicable under Chs. 70 and 74, Wis. Stats.

12.075 GARAGE, YARD AND RUMMAGE SALES REGULATED.

(1) LICENSE REQUIRED. No person shall conduct a garage, yard or rummage sale within the Village without having obtained a license from the Village Clerk, except as provided in sub. (2) below. The license shall be obtained at least one working day before the sale and shall be prominently displayed during the sale. Before issuing the license, the Clerk shall refer the application to the Building Inspector for

verification as to whether or not such sale at the proposed location is compatible with ch. 17 of this Code.

(2) EXCEPTION TO LICENSE REQUIREMENTS. No person shall be required to obtain a license if:

(a) The sale is conducted in a C-1 or M-1 district and is a permitted use in such district.

(b) The person conducts, on his own residential premises, no more than 3 sales in any one calendar year. Each sale may be held for no more than three consecutive days and shall not be conducted between the hours of 7:00 P.M. and 7:00 A.M.

(c) The sale conducted by religious, educational, charitable or civic organizations on premises located in a residential district no more than three times in any calendar year. Each such sale shall not be conducted between the hours of 7:00 P.M. and 7:00 A.M.

(3) OWNERSHIP OF MERCHANDISE. All goods for sale at a garage, yard or rummage sale shall be household goods or personal possessions from the residence where the sale is being held or, in the case of a group sale, from the residences of the participating households. In no case shall any sales become outlets for wholesale or retain commercial sales.

(4) ADVERTISING SIGNS REGULATED. Signs advertising garage, yard or rummage sales shall be subject to the following:

(a) Such signs may be free standing and shall not exceed 2 square feet in size.

(b) Such signs may be located on tree banks if:

1. The sign does not impeded or obstruct pedestrian or vehicular traffic, and

2. The explicit permission of the occupant of the property that adjoins the tree bank is obtained.

(c) Such signs shall not be located on utility poles, signposts, traffic control devices, public trees or shrubs.

(d) No more than three signs may be used for any sale and no more than one sign per yard shall be permitted, except that two signs shall be permitted on corner lots, one facing each street.

(e) Such signs may be displayed only between 7:00 A.M. and 7:00 P.M. on the date of sale and shall be promptly removed by the owner of the property where the sale was held.

(5) LICENSE FEE. The license fee shall be \$10.00 per sale.

(6) LENGTH OF SALE. Under no circumstances shall a garage, yard or rummage sale be held for more than three consecutive days or between the hours of 7:00 P.M. and 7:00 A.M.

12.08 PENALTY. In addition to the specific penalties provided in this chapter, any person who shall violate any provision of this chapter shall be subject to a penalty, as provided in sec. 25.04 of this Code. A separate offense shall be deemed committed on each day on which a violation of this chapter occurs or continues.

## 12.09 REGULATION OF SEXUALLY ORIENTED BUSINESSES

### SECTION 1.0: PURPOSE AND FINDINGS.

(1) PURPOSE. It is the purpose of this ordinance to regulate Sexually Oriented Business in order to promote the health, safety, morals, and general welfare of the citizens of the Village, and to Establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Business within the Village. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(2) FINDINGS. The operation of Sexually Oriented Businesses and certain activities that frequently occur in or around Sexually Oriented Businesses tend to have adverse secondary effects on communities, including increasing criminal and other offensive activities, disrupting the peace and order of communities, depreciating the value of real property, harming the economic welfare of communities, encouraging or facilitating the spread of sexually transmitted diseases, and impairing the quality of life of the communities; and Sexually Oriented Businesses require special supervision in order to

protect and preserve the health, safety, and welfare of the patrons of such business as well as the citizens of the communities where they locate, and the adverse secondary effects of Sexually Oriented Businesses are well documented in studies by other communities, including but not limited to studies by Tucson, Arizona (1990); Garden Grove, California (1991); Denver, Colorado (1998); New York, New York (1994); Cleburne, Texas (1997); Dallas, Texas (1997); Houston Texas (1997); Newport News, Virginia (1996); Bellevue, Washington (1988), St Croix County, Wisconsin (1993); and the adverse secondary effects of Sexually Oriented Businesses are also reported in judicial opinions relating to Sexually Oriented Businesses, including but not limited to City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed2d 670 (2000); City of Erie v. Pap's A.M., 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); Young v. American Mini Theatres, Inc., 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Schultz v. City of Cumberland, 228 F.3d 831 (7th Cir. 2000); DiMa Corp. v. Town of Hallie, 185 F.3d 823 (7th Cir. 1999); North Avenue Novelties, Inc. v. City of Chicago, 88 F.3d 441 (7th Cir. 1996); Matney v. County of Kenosha, 86 F.3d 692 (7th Cir. 1996); United States v. Marren, 890 F.3d 924 (7th Cir. 1989); therefore, based on the above studies and cases as well as the experiences of the Village, its residents and other communities, the Village finds that:

(a) Sexually Oriented Businesses can and frequently do impair the character and quality of surrounding neighborhoods by contributing to physical deterioration and blight, as well as affecting the value of surrounding properties, the economic welfare of communities, and the quality of life of residents;

(b) Sexually Oriented Businesses contribute to increased levels of criminal activities in neighborhoods where such Establishments are located including prostitution; promotion of prostitution; rape; sexual assaults; other assaults; other sex related crimes; robbery; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual molestation; molestation of a child; disorderly conduct; disturbances of the peace; drinking in public; drug use; drug dealing; littering; and other violations of the law.

(c) Certain Employees of Sexually Oriented Businesses engage in a higher incidence of certain types of illicit sexual behavior than Employees of other Establishments.

(d) The operation of Sexually Oriented Businesses can impair property values and have other adverse secondary effects on property up to at least 1,000 feet from the Sexually Oriented Businesses.

(e) The impacts of Sexually Oriented Businesses on the value of neighboring properties are greater on residential properties than nonresidential properties.

(f) Adult Retail Establishments tend to have less significant secondary effects than Adult Entertainment Establishments, and Limited Adult Media Stores, properly controlled, tend to have less significant secondary effects than other Adult Retail Establishments.

(g) Private or semi-private Booths, Rooms or Cubicles intended for the viewing of Adult Media, or live sex shows are used by patrons of Sexually Oriented Businesses for engaging in sexual acts, including masturbation, intercourse, sodomy, and oral copulation, resulting in unsafe and unsanitary conditions in the booths. Bodily fluids, including semen and urine, are often found in such booths. These fluids, and the activities that occur in video viewing booths, may spread communicable disease, including, but not limited to, syphilis, gonorrhea, genital Chlamydia trachomatis, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiosis, salmonella infections, and shigella infections.

(h) Many Sexually Oriented Businesses Establishments provide live entertainment in which physical contact between performers and customers, often sexual in nature, occurs and can occur, thus facilitating the transmission of various diseases and exposing performers to the risk of assaults and other unwelcome contact.

(i) In the year 2006, 407 new case of HIV infection were reported in Wisconsin, bringing the total number of cases reported since 198 to 9,523. *The epidemic of HIV infection in Wisconsin review of case surveillance data collected through 2006*, Wisconsin Department of Health and Family Services. In the United States each year 3,000,000 people are infected with Chlamydia, 650,000 with Gonorrhea, 70,000 with Syphilis, 1,000,000 with herpes, 5,500,000 with Human Papillomavirus, 120,000 with Hepatitis B, and 5,000,000 with Trichomoniasis. Overall, the Center Disease Control estimates there are 15,000,000 new cases of sexually transmitted diseases each year. *Tracking the Hidden Epidemics: Trends in STDs in the United States*, United States Health and Human Services Department, Center for Disease Control, 2000.

(j) Permitting and/or licensing is a legitimate means of accountability to ensure that operators of Sexually Oriented Businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their Establishments to be used as places of illegal sexual activity or solicitation; and are operated in a manner consistent with the health, safety and welfare of its patrons and Employees, as well as the citizens of the Village. It is appropriate to require reasonable assurances that the Licensee is the actual

operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.

(k) Requiring licensees of Sexually Oriented Businesses to keep information regarding Employees and certain past Employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by presenting minors from working in such Establishments.

(l) The license fees required in this Ordinance are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the Village in regulating Sexually Oriented Businesses.

(m) Requiring Sexually Oriented Businesses to locate in the vicinity of state trunk highways enhances the ability of county law enforcement Personnel to monitor the Establishments, and deter and respond to criminal activity at such Establishments; and

(n) It is not the intent of this ordinance to suppress or censor any expressive activities protected by the First Amendment of the United States constitution or Article I, Section 3 of the Wisconsin Constitution, but rather to enact a content neutral ordinance that addresses the compelling interest of the village in mitigating the secondary effects of Sexually Oriented Businesses; and

(o) It is not the intent of the Village to condone or legitimize the distribution of obscene materials, and the Village recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the Village of West Baraboo.

## SECTION 2.0: DEFINITIONS.

(1) ADULT ARCADE. An Establishment to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer Persons per machine at any one time, and where the images so displayed have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."

(2) ADULT BATH HOUSE. An Establishment or business which provides the services of baths of any kind, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin, and which Establishment provides to its

patrons an opportunity to engage in Specified Sexual Activities or to observe Employees or independent contractors exhibiting Specified Sexual Activities or "specified anatomical area."

(3) **ADULT BODY PAINTING STUDIO.** An Establishment or business wherein patrons are afforded an opportunity to paint images on the body of a Person who is exhibiting Specified Sexual Activities or "specific anatomical areas." For purposes of this ordinance, the Adult Body Painting Studio shall not be deemed to include a tattoo parlor.

(4) **ADULT CABARET.** An Establishment or business which regularly or on a frequently recurring basis features live entertainment where persons appear in a state of Semi-Nude or in a State of Nudity, or are characterized by the exposure of Specified Anatomical Areas or Specified Sexual Activities for observation by patrons therein, or which holds itself out or identifies itself to the public by its name, its signs and/or its advertising as an Establishment where such live entertainment is regularly or on a frequently recurring basis available, including, without limitation, by verbal or pictorial allusions to sexual stimulations or gratification by references to "adult entertainment," "strippers," "exotic dancers," "gentleman's club," or similar terms.

(5) **ADULT ENTERTAINMENT ESTABLISHMENT.** Includes Adult Arcades, Adult Body Painting Studios, Adult Cabarets, Adult Bath Houses, Adult Massage Parlors, Adult Modeling Studios, Adult Motels, Adult Motion Picture Theaters, Adult Motion Picture Theaters (Outdoor), Adult Theaters Escort Agencies, and Sexual Encounter Centers.

(6) **ADULT MASSAGE PARLOR.** An Establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including, without limitation, exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin and which Establishment provides to its patrons an opportunity to engage in Specified Sexual Activities or to engage in any method of rubbing, pressing, striking, kneading, tapping, pounding, vibrating or stimulating a "specified anatomical area" with the hands or with any instruments, or the opportunity to observe Employees or independent contractors exhibiting Specified Sexual Activities or "Specified Anatomical Areas."

(7) **ADULT MEDIA** is defined as any of the following; books, magazines, periodicals, posters, other printed materials, or photographs, slides, film, motion pictures, video tapes, video discs, computer files, or other formats for storing, displaying or exhibiting visual representations which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to Specified Sexual Activities or "Specified Anatomical Areas."

(8) **ADULT MEDIA STORE.** A commercial Establishment or business that rents and/or sells Adult Media and that meets any of the following three tests:

(a) 40 percent or more of the Gross Public Floor area is devoted to Adult Media.

(b) 40 percent or more of the stock-in-trade consists of Adult Media.

(c) The store advertises or holds itself out in any forum as a Sexually Oriented Business.

(9) **ADULT MODELING STUDIO.** An Establishment or business which provides the services of live models modeling lingerie or transparent apparel to patrons or a business where a Person who displays Specified Anatomical Areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other Person who pay money or any form of consideration. Adult Modeling Studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:

(a) that has no sign visible from the exterior of the structure and no other advertising that indicates a Nude or Semi-Nude Person is available for viewing; and

(b) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class: and

(c) where no more than one (1) Nude or Semi-Nude model is on the premises at any one (1) time.

(10) **ADULT MOTEL** means a hotel, motel or similar commercial Establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions.

(11) **ADULT MOTION PICTURE THEATER** means a commercial Establishment for adults where regularly or routinely, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown which have as their dominant theme, or which are distinguished or characterized by their



emphasis on matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas".

(12) **ADULT MOTION PICTURE THEATER (OUTDOOR).** An Establishment located on a parcel of land and emphasizing or predominately showing movies out of doors for observation by patrons, which movies are distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

(13) **ADULT NOVELTY SHOP.** An Establishment or business offering goods for sale or rent and that meets any of the following tests:

(a) The Establishment offers for sale items from any two of the following categories: (a) Adult Media, (b) lingerie, or (c) leather goods, marketed or presented in a context to suggest their use for flagellation or torture of a Person clothed or naked, or the binding or other physical restraint of a Person clothed or naked.

(b) More than 5 percent of its stock in trade consists of instruments, devices, or paraphernalia either designed as representation of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

(14) **ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial Establishment which regularly features Persons who appear in a State of Nudity or Semi-Nude, or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

(15) **ADULT RETAIL ESTABLISHMENT.** Include adult media stores, limited adult media stores, and adult novelty shops.

(16) **BOOTH, ROOM, OR CUBICLE** means such enclosure that are specifically offered to the public or members of a Sexually Oriented Business for hire or for a fee as part of a business operated on the premises which offers as part of its business entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, Booth, Room, or Cubicle does not mean such enclosures that are private offices used by the owners, managers or Person employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the Establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any Person other than Employees; nor shall this definition apply to hotels, motels, or other similar Establishments licensed by the State of Wisconsin pursuant to Wis. Stat. Ch. 50.

(17) EMPLOYEE means a Person who performs any service on the premises of a Sexually Oriented Business on a full-time, part-time or contract basis, whether or not the Person is denominated an Employee, independent contractor, agent or otherwise and whether or not said Person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a Person exclusively on the premises for repair or maintenance of the premises or who provides equipment for the premises, or for the delivery of goods to the premises.

(18) ESCORT means a Person who, for consideration, agrees or offers to act as a companion, guide, or date for another Person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another Person.

(19) ESCORT AGENCY means a Person or business association that furnishes, offers to furnish, or advertises to furnish Escorts as one of its primary business purposes for a fee, tip, or other consideration.

(20) ESTABLISH means and includes any of the following:

(a) The opening or commencement of any Sexually Oriented Business as a new business;

(b) The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;

(c) The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or

(d) The relocation of any Sexually Oriented Business.

(21) GROSS PUBLIC FLOOR AREA. The total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.

(22) LIMITED ADULT MEDIA STORE. An Establishment that rents and/or sells adult media but is not an "adult media store" as defined in this Section, and that meets either of the following tests:

(a) More than 10 percent, but less than 40 percent, of the Gross Public Floor Area is devoted to adult media

(b) More than 10 percent, but less than 40 percent, of the stock-in-trade consists of adult media.

(23) NUDITY or a STATE-OF-NUDITY means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(24) PERMITTEE AND/OR LICENSEE means a Person in whose name a permit and/or license to operate a Sexually Oriented Business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license; and in the case of an Employee, a Person whose name a license has been issued authorizing employment in a Sexually Oriented Business.

(25) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(26) PUBLIC INDECENCY means a Person who knowingly or intentionally, in a Public Place:

- (a) Engages in Specified Sexual Activities
- (b) Appears in a State of Nudity or Semi-Nude Condition
- (c) Fondles the genital of self or another Person.

(27) PUBLIC PLACE means a location frequented by the public, or where the public is present or likely to be present, or where a Person may reasonably be expected to be observed by members of the public. Public Places include, but are not limited to: streets, sidewalks, parks, beaches, business and commercial Establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilizing religious, social, fraternal or similar organizations and Sexually Oriented Businesses. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a Public Place. Public Place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which Nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. Public Place does not include a private facility that has been formed as a family oriented clothing optional facility, properly licensed by the state.

(28) SEMI-NUDE means a state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(29) SENSITIVE LAND-USE is defined to include any and all of the following:

- (a) Property zoned or used for residential purposes;
- (b) Property zoned or used for religious institutional purposes;
- (c) An educational institution for students in twelfth grade or below;
- (d) A library or museum;
- (e) A public or private park, recreations area, or playground;
- (f) A licensed day care center;
- (g) A historic district;
- (h) A facility predominantly serving individuals with a "developmental disability," as that term is defined in sec. 51.01(5)(a) and (b), Wis. Stats., and subsequent amendments thereto;
- (i) A private youth development organization such as but not limited to YMCA, Junior Achievement, Boys Club of America and Campfire Girls; and
- (j) A housing facility for the elderly.

(30) SEX TOY. An instrument, device, or paraphernalia either designed as a representation of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

(31) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (a) physical contact in the form of wrestling or tumbling between Persons of the opposite sex; or

(b) activities between male and female Persons and/or Persons of the same sex when one or more of the Persons is in a State of Nudity or semi-Nude.

(32) SEXUALLY ORIENTED BUSINESS. Includes Adult Entertainment Establishments and Adult Retail Establishments as defined herein.

(33) SPECIFIED ANATOMICAL AREAS is defined as:

(a) Less than completely and opaquely covered:

1. Human genitals, pubic region;
2. Buttock, anus, anal cleft;
3. Female breasts below a point immediately above the top of the areola; and
4. Human male genitals in a discernibly turgid state, even if completely and opaquely covered

(34) SPECIFIED CRIMINAL ACTIVITIES is defined as any of the following offenses:

(a) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography, public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries:

(b) For which:

1. Less than 2 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
2. Less than 5 years have elapsed since the date of conviction or the date of release from confinement from the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of 2 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a Person residing with the applicant.

(35) SPECIFIED SEXUAL ACTIVITIES is defined as actual or simulated:

(a) Exhibition of genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;

(c) Fondling or other erotic touching of human genitals, public region, buttock or female breast

(d) Excretory functions as part of or in connection with any of the activities set forth in 1 through 4 above.

(36) SUBSTANTIAL ENLARGEMENT of a Sexually Oriented Business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exists on the date the Ordinance takes effect..

(37) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the Person possessing the ownership or control.

#### SECTION 3.0: CLASSIFICATION.

Sexually Oriented Businesses are classified as follows:

(1) ADULT ENTERTAINMENT ESTABLISHMENTS

- (a) adult arcade
  - (b) adult bath house
  - (c) adult body painting studio
  - (d) adult cabaret
  - (e) adult massage parlor
  - (f) adult modeling studio
  - (g) adult motel
  - (h) adult motion picture theater
  - (i) adult motion picture theater (outdoor)
  - (j) adult theater
  - (k) escort agency
  - (l) sexual encounter center
- (2) ADULT RETAIL ESTABLISHMENTS
- (a) adult media store
  - (b) adult novelty shop
  - (c) limited adult media store

#### SECTION 4.0: PERMITTED AND PROHIBITED USES.

(1) Where the underlying zoning in the Village is Commercial (C) or Industrial (I), the following types of Sexually Oriented Businesses may be located within those specifically zoned districts of the Village of West Baraboo, subject to all other restrictions within this ordinance.

- (a) Limited Adult Media Stores,

- (b) Adult Arcades;
- (c) Adult Cabarets;
- (d) Adult Media Stores;
- (e) Adult Modeling Studios
- (f) Adult Motels;
- (g) Adult Motion Picture Theaters; and
- (h) Adult Novelty Shops.
- (i) Adult Theaters
- (j) Escort Agencies

(2) **PROHIBITED USES.** It is unlawful to Establish or operate the following types of Sexually Oriented Businesses within the Village of West Baraboo:

- (a) Adult bath houses;
- (b) Adult body painting studios;
- (c) Adult massage parlor;
- (d) Adult motion picture theater (outdoor); and
- (e) Sexual Encounter Centers.

(3) **ACCESSORY USES.** Any accessory use authorized by the underlying zoning district may be an accessory use to a Sexually Oriented Business. In no case shall a Sexually Oriented Business be an accessory use to any principal use designated by any section of this ordinance.

(4) **UNDERLYING DISTRICT STANDARDS.** Sexually Oriented Businesses shall comply with the standards of the zoning districts in which they are located, including standards relating to lot area and width, building height and area, yard requirements and sanitary sewer systems.



## SECTION 5.0: LOCATION REQUIREMENTS AND RESTRICTIONS.

(1) Sexually Oriented Businesses shall be permitted to be Established only in the Village's Industrial (I) and Commercial (C) zoning districts provided that:

(a) No Adult Entertainment Establishment may be Established within 500 feet of any "Sensitive Land-Use.":

(b) No Adult Retail Establishment may be Established within 300 feet of any Sensitive Land -Use."

(c) All buildings used for the operation of a Sexually Oriented Business shall be set back 75 feet from the street right-of-way.

(d) The building used for the operation of a Sexually Oriented Business may not be Established within 1,500 feet of another Sexually Oriented Business.

(e) The building used for the operation of a Sexually Oriented Business must be Established within 300 feet of a State Trunk Highway right-of-way (Maintained & Traveled) as indicated on the map of the official layout of the State Trunk Highway System of Sauk County prepared by the State of Wisconsin, Department of Transportation in accordance with Section 84.02(12) State Statutes and as currently on file with the Sauk County clerk and the Sauk County Highway Commissioner and as subsequently amended and shall not be located within 500 feet of the right-of-way of the intersection of another State Trunk Highway or any Federal or County Trunk Highway, or any other road.

(f) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of other parcels of property to which these locational requirements apply.

(g) For purposes of Subsection (d) above, the distance between any two Sexually Oriented Business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(h) The location requirements and restrictions specified in this subsection do not apply to limited adult media stores.

SECTION 6.0: EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

(1) It shall be unlawful for an owner or operator of a Sexually Oriented Business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(2) It shall be unlawful for the owner or operator of a Sexually Oriented Business to allow the exterior portion of the Sexually Oriented Business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

(3) It shall be unlawful for the owner or operator of a Sexually Oriented Business to allow exterior portions of the Establishment to be painted any color other than a single achromatic color. This provision shall not apply to a Sexually Oriented Business if the following conditions are met:

(a) The establishment is a part of a commercial multi-unit center; and

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(c) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a Sexually Oriented Business.

(4) SIGNAGE.

(a) Notwithstanding any other Village Ordinance, Code, or Regulation to the contrary, it shall be unlawful for the owner or operator of any Sexually Oriented Business or any other Person to erect, construct, or maintain any sign for the Sexually Oriented Business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(b) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

1. not contain any flashing lights;
2. be a flat plane, rectangular in shape;

3. not exceed the dimensions for signs allowed in the zoning district where the Sexually Oriented Business is located.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one (1) display surface.  
Such display surface shall:

1. be a flat plane, rectangular in shape;
2. not exceed twenty (20) square feet in area;
3. not exceed five (5) feet in height and four (4) feet in width; and
4. be affixed or attached to any wall or door of the enterprise.

(f) The provisions of subsections (b)1 and (c) and (d) above shall also apply to secondary signs.

**SECTION 7.0: NON-CONFORMING USES.** For the purposes of this Ordinance, the treatment of non-conforming circumstances shall be as follows:

(1) Any business lawfully operating on the effective date of this Ordinance that is in violation of the locational or structural configuration requirements of this Ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more Sexually Oriented Businesses are within 1,500 feet of one another and otherwise in a permissible location, the Sexually Oriented Business that was first Established and continually operating at a particular location is the conforming use and the later-Established business(es) is non-conforming.

(2) A Sexually Oriented Business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the Sexually Oriented Business permit and/or license, of any facility defined by this ordinance as a Sensitive Land-Use. This provision applies only to the renewal of a valid permit

and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

**SECTION 8.0: GENERAL REQUIREMENTS AND RESTRICTIONS GOVERNING SEXUALLY ORIENTED BUSINESSES.** Except as provided below, all Sexually Oriented Businesses shall comply with the following requirements and restrictions.

**(1) PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.**

(a) It shall be unlawful to allow a Person who is younger than eighteen (18) years of age to enter or be on the premises of a Sexually Oriented Business at any time that the Sexually Oriented Business is open for business.

(b) It shall be the duty of the operator of each Sexually Oriented Business to ensure that an attendant is stationed at or near each public entrance to the Sexually Oriented Business at all times during such Sexually Oriented Businesses' regular business hours. It shall be the duty of the attendant to prohibit any Person under the age of eighteen (18) years from entering the Sexually Oriented Business. It shall be presumed that an attendant knew a Person was under the age of eighteen (18) unless such attendant asked for and was furnished:

1. a valid form of foreign, federal or state government issued personal identification or driver's license, which includes a photograph of the bearer's head and face.

2. valid Personal identification certificate issued by the State of Wisconsin reflecting that such Person is eighteen (18) years of age or older.

(c) Other than Limited Adult Media stores, signs at least one (1) square feet in area stipulating that Persons under the age of 18 are not permitted inside the Establishment, shall be posted at all public entrances to the Establishment.

(2) Parking shall be provided in a lighted area, in conformity with applicable lighting and parking standards provided elsewhere in this Ordinance.

(3) No Sexually Oriented Business patron shall be permitted at any time to enter into any of the non-public portions of any Sexually Oriented Business, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of Sexually Oriented Business Employees. This subsection shall not apply to Persons delivering goods and material, food and beverages, or performing maintenance or

repairs to the permitted premises; provided, however, that any such Persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

(4) The owner and/or operator of the Sexually Oriented Business shall agree to comply with all State, Federal, Local laws and ordinances, including obscenity, liquor and cabaret laws. Solicitation for purposes of prostitution shall be strictly prohibited. Conduct in violation of sec. 944.21, Wis. Stats., or sec. 9.01 of the Village of West Baraboo Ordinances, including the exhibition of "obscene material" and "obscene performances," as those terms are defined in section 944.21(2), Wis. Stats., shall be strictly prohibited.

(5) The hours of operation of Sexually Oriented Businesses shall be limited to 10:00am to 2:00am the following calendar day.

(6) No residential quarters shall be allowed on a premises with a Sexually Oriented Business.

(7) A licensed or responsible manager shall be on duty at all times.

(8) Managers shall exercise diligence in preventing customers, Employees or performers from violating the terms of this ordinance or any state laws.

(9) Management is responsible for controlling the behavior of customers and performers.

(10) All Sexually Oriented Businesses shall utilize security Personnel to patrol and video surveillance equipment to control and monitor patrons and Employees both inside and outside the premises, including parking lots, and adjacent sidewalk, and the tapes or other media utilized by said video monitoring systems will be turned over to the Sheriff's Department immediately upon request.

(11) Sexually Oriented printed or graphic materials (including, without limitation, any advertising or packaging materials that are themselves Sexually Oriented printed or graphic materials) that are displayed within any Sexually Oriented Business shall not be visible to anyone outside the building where the business is located.

#### SECTION 9.0: PERMIT AND/OR LICENSE REQUIRED.

(1) It shall be unlawful for a Person to Establish or operate a Sexually Oriented Business without a valid permit and/or license, issued by the Village Clerk.

(2) It shall be unlawful for any Person who operates a Sexually Oriented Business to permit a Person to be employed, work for or perform for a Sexually Oriented Business who is not licensed as a Sexually Oriented Business Employee by the Village pursuant to this Ordinance.

(3) It shall be unlawful for any Person who is required under this Ordinance to be licensed as a Sexually Oriented Business Employee to work for or to perform in a Sexually Oriented Business without having secured a Sexually Oriented Business Employee license pursuant to this Ordinance.

(4) It shall be unlawful for any Person to Substantially Enlarge a Sexually Oriented Business without a valid Sexually Oriented Business license issued by the Village pursuant to this Ordinance.

(5) A license may be issued only for one Sexually Oriented Business located at a fixed and certain place. Any Person who desires to operate more than one Sexually Oriented Business within the Village must have a license for each.

(6) All Sexually Oriented Businesses existing at the time of the passage of this Ordinance must submit an application for a license within forty five (45) days of the passage of this Ordinance.

#### SECTION 10.0: APPLICATION FOR A LICENSE.

(1) An application for a license must be made on a form provided by the Village.

(2) The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance with all Village Codes including Village, fire, health, building and zoning codes.

(3) The application for a sexually oriented business license shall contain or have attached to it the following information and documents or shall explain why any such particular requirement is not applicable to the application.

(a) Name (and any aliases), street address (a post office box without a street address is not sufficient) and telephone number of the applicant (and, at the option of the applicant, the applicant's fax number and/or e-mail address if the applicant consents to receive notices or other communications relating to the application or license by such means), and any other name under which the applicant is currently doing business or has done business at any time during the five years immediately preceding the date of application;

(b) If the applicant is an individual, his or her date of birth and state of residence currently and at any time during the five years immediately preceding the date of the application, all individuals identified in response to this provision must be at least 18 years of age;

(c) If the applicant is not an individual, the type of entity it is (e.g., corporation, general partnership, limited partnership, limited liability company, joint venture, etc.), the state in which it was formed, each state in which it is currently doing business or has done business during the five years immediately preceding the date of application, and the name and address of its registered agent, all individuals identified in response to this provision must be at least 18 years of age.;

(d) If the operator is not an individual, the name and the information specified in Subsection 3(b) or (c) above, whichever is applicable, for each of the following, and all individuals identified in response to this provision must be at least 18 years of age:

(i) If the applicant is a corporation, for each officer and director and for each shareholder owning at least a 20% interest in the applicant.

(ii) If the applicant is a limited partnership, for any general partner, and for any limited partner owning at least a 20% interest in the applicant.

(iii) If the applicant is a partnership, for each general partner.

(iv) If the applicant is a joint venture, for each joint venturer.

(v) If the applicant is a limited liability company managed by one or more managers, for each manager and for each member owning at least a 20% interest in the applicant, if the applicant is a limited liability company managed by the members, for each member.

(vi) If the applicant is any other type of entity, for each person who or which exercises or is authorized to exercise any control over the operations of the entity.

(e) If the applicant is not the sole owner of the real property on which the proposed Sexually Oriented Business is proposed to be located or operated, the name, street address and telephone number of each owner;

(f) If the applicant or any person required to be listed in response to Subsection 3(a) above has been convicted during the five years immediately preceding the date of the application or obscenity, sexual assault, prostitution, keeping a place of prostitution, pandering, soliciting prostitutes, lewd and lascivious behavior, public sexual

gratification or other similar crimes of a sexual nature, or of the manufacture, distribution or delivery of a controlled substance or of a controlled substance analog, or of possession of a controlled substance or of other similar crimes relating to the distribution or delivery of controlled substances or controlled substance analogs, identify the person so convicted and state the crime, the date of conviction and identify the court and jurisdiction in which the conviction occurred (e.g., Circuit Court, Sauk County, Wisconsin);

(g) If the applicant or any person required to be listed in response to Subsection 3(a) above has been adjudicated guilty during the five years immediately preceding the date of application of any ordinance violations occurring in or relating to the operation of a Sexually Oriented Business, identify the person so adjudicated, state the nature of the ordinance violation, the date of the adjudication and identify the court and jurisdiction in which the adjudication occurred;

(h) Name and street address of any other Sexually Oriented Business(es) owned and/or operated by the applicant or by any person required to be listed in response to Section 3(a) above currently or within the five years immediately preceding the date of application, and the name, street address and telephone number of each local governmental entity which has issued or granted any permit or license for or with respect to each such use or establishment.;

(i) If a permit or license for a Sexually Oriented Business owned or operated by the applicant or by any person required to be listed in response to Subsection 3(a) above has been terminated or suspended during the five years immediately preceding the date of the application, state the name and address of the business, the type of permit or license terminated or suspended, the date and reason(s) for the termination or suspension and the name, street address and telephone number of the governmental entity that terminated or suspended the permit or license;

(j) Location of the proposed Sexually Oriented Business (legal description of the real property, street address of the building, and the floor and building unit designation, if applicable);

(k) List and describe all proposed Sexually Oriented Businesses [adult cabaret, adult media store, adult movie theater, etc.] to be located and conducted together on the property.

(l) List and describe all proposed indoor accessory uses related to and be located and conducted together with the listed Sexually Oriented Business(es) on the property;



(m) List and describe all other proposed principal uses and related accessory uses to be located and conducted together with the Sexually Oriented Business(es) on the property.

(n) Name of the business or establishment which the proposes Sexually Oriented Business will constitute or be a part of;

(o) Whether the entire building where the proposed Sexually Oriented Business(es) will be located will be the physically separate defined area occupied by the proposed Sexually Oriented Business(es) and any related indoor accessory use(s), and if not, attach a scale drawing showing the boundaries of the physically separate defined area to be occupied by such use(s), and describe in detail the means by which such area will be physically separated from the remainder of the building or unit.

(p) Whether a site and operational plan approval has been issued or applied for with respect to the proposed Sexually Oriented Business(es) and any other use(s) to be located and conducted together in the same physically separate defined area of a building, and if so, the date of issuance of such approval or, if not issued, the date of the application for such approval;

(q) Whether a conditional use permit has been issued or applied for with respect to any of the use(s) proposed to be located and conducted together with the proposed Sexually Oriented Business(es), and if so, the date of issuance of sch permit or, if not issued, the date of the application for such permit, and the type of conditional use involved;

(r) Whether any existing conditional use permit will be automatically terminated upon issuance of the requested Sexually Oriented Business license;

(s) Whether a zoning ordinance amendment is necessary to accommodate the proposed Sexually Oriented Business(es), and if so, whether the required zoning ordinance has been adopted or denied, or if pending , the date of the rezoning application:

(t) If the building in which the proposed Sexually Oriented Business(es) is proposed to be located is not existing, or if such building is proposed to be modified, attach a copy of detailed building plans that satisfy the plan requirements for a building permit;

(u) A detailed description of how the applicant will ensure that individuals who are a less 18 years of age will be excluded from the area to be occupied by any proposed Sexually Oriented Business(es);

(v) A detailed description of how the operator will ensure that any semi-nude individual appearing live and publicly in a Sexually Oriented Business will only so appear on a stage or raised platform which is raised not less than 24 inches above the surrounding floor areas;

(w) A detailed description of how the applicant will ensure that no semi-nude individual appearing live in an Sexually Oriented Business will be visible to anyone outside the defined are of the building occupied by such use establishment;

(x) A detailed description of how the applicant will ensure that no adult media printed or graphic materials displayed Sexually Oriented Business will be visible to anyone outside the physically separate defined are of the building occupied by such use or establishment;

(y) A detailed description of how the applicant will ensure that no adult media movie or motion picture materials shown in a Sexually Oriented Business will be visible to anyone outside the physically separate defined are of the building occupied by such use or establishment.

(z) Attach a scale drawing of the layout of the interior f the building in which the proposed Sexually Oriented Business(es) and any proposed related indoor accessory use(s) will be conducted showing enough of the building interior to include the boundaries of the physically separate defined area of the building to be occupied by such use(s) showing:

(i) The boundary of the physically separate defined area within which the proposed Sexually Oriented Business(es) and any related indoor accessory uses will be conducted, with dimensions, and showing any physical means by which the required physical separation of such area will be achieved, and if the Sexually Oriented use(s) will involve the retail sale or rental of merchandise, the location where the checkout counter and cash register will be located within such area:

(ii) The location, dimensions and function of each room, cubicle or other enclosed space to which customers or members of the public will have access;

(iii) The location, dimensions and function of each room or other enclosed space from which customers or member of te public will be excluded, and the means of accomplishing such exclusion;

(iv) The location, height and other dimensions, type and purpose of any interior movable or non-floor-to-ceiling walls, partitions, screens or other barriers; and the function of any spaces created by such barrier, and whether customers or members of

the public, customers, club members or guests will be admitted to or excluded from such spaces;

(v) The location and dimensions of each doorway, entryway or passageway through which customers or members of the public will be permitted to pass and whether the doorway, entryway or passageway will be open and unobstructed or closed (only exterior entrances/exits and rest rooms can be closed or obstructed);

(vi) The location and dimensions of each doorway, entryway or passageway through which members of the public, customers, club members or guests will not be permitted to pass and the means of accomplishing such exclusion;

(vii) The location and dimension of any raised platform or stage on which any semi-nude employees or entertainers will appear live and publicly and the height thereof above the surrounding floor areas.

(viii) The location and dimensions of the required minimum three foot separation zone between any raised platform on stage where semi-nude employees or entertainers will appear live and publicly and any area where customers or members of the public will be permitted to sit, stand, move about or dance, and the location, type, materials and dimensions of the required physical separation barrier at the outer periphery of such separation zone;

(ix) The location and dimensions of any bar and or related service area;

(x) The location and dimensions of any dance floor;

(xi) The location and dimensions of any customer seating area;

(xii) The location and dimensions of any merchandise racks;

(xiii) The location and dimensions of any cubicles, booths, small rooms or other small room or other small partially enclosed spaces to be used by customers or members of the public for private viewing of videos or any other similar purpose;

(xiv) The location and dimensions of any movie screen, projection equipment, or viewing area;

(xv) A certification that the applicant has reviewed this chapter;

(xvi) A certification that the applicant has reviewed the information contained in or submitted with the application and that such information is up to date, accurate and complete as of the date of the application.

(4) The fact that a Person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a Sexually Oriented Business permit and/or license.

(5) Sexually Oriented Business Employee License. Any employee or entertainer desiring to work, provide services or entertain at a Sexually Oriented Business, licensed pursuant to this Ordinance, while such use or establishment is open to customers of the general public, shall obtain and possess a valid Sexually Oriented Business Employee license before commencing or continuing such work, services or entertaining. The Village Clerk is authorized to issue such permits for periods of 30 days or one year, depending on the work plans of the applicant. An application for a Sexually Oriented Business Employee license shall be filed with the village Clerk on a form provided by the Village and dated and signed by the applicant. The application shall include the following information:

(a) Name of the applicant and any aliases used within the five years immediately preceding the date of the application.

(b) Name and address of the Sexually Oriented Business where the applicant proposes to work, perform services or entertain, the nature of the work, services or entertainment to be provided, and the anticipated duration of the work, services or entertainment.

(c) The street address and telephone number at which the applicant can be contacted regarding the application and permit.

(d) The applicant's date of birth, sex, and race. state issued identification or driver's license number, and social security number. All applicants must be at least 18 years of age.

(e) The applicant's state of residence currently and at any time during the five years immediately preceding the date of the application.

(f) Whether the applicant has been convicted during the five years immediately preceding the date of the application of any of the crimes specified in Section 10.3(f) of this chapter, and if so, the information about such conviction(s) required by that subsection; and

(g) Whether the applicant has been adjudicated guilty during the five years immediately preceding the date of application of any ordinance violation occurring in or relating to the operation of a Sexually Oriented Business, and if so, the nature of the ordinance violation, the date of the adjudication, and the court and jurisdiction in which the adjudication occurred.

(6) Background Check. Upon the filing of an application for a Sexually Oriented Business license or a Sexually Oriented Business Employee license , the Village Clerk shall immediately request the Sheriff's Department to conduct a background check(s) on the applicant and on each person identified in response to Subsection 3(d) of this section. The Village Clerk shall present the results of such background check(s) for the five years immediately preceding the date of the application to the Village Board.

(7) Notification of Nearby Commercial and Residential Neighbors. Upon the filing of an application for a Sexually Oriented Business license , the Village Clerk shall send written notification of the application to all street addresses in the Village that are located within 500 feet of the proposed location of the Sexually Oriented Business or 300 feet in the case of Limited Adult Media Stores. The notification shall contain the following information:

- (a) The name of the applicant
- (b) The date of the application
- (c) The type of Sexually Oriented Business proposed to be licensed.
- (d) The address of the proposed Sexually Oriented Business

(8) The application shall be accompanied by the following:

- (a) Payment of the application fee in full:
- (b) If the applicant is a Wisconsin corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (c) If the applicant is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
- (d) If the applicant is a limited partnership formed under the laws of Wisconsin, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(e) If the applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(f) If the Persons identified as the fee owner(s) of the tract of land in item (e) are not also the owners of the Sexually Oriented Business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the Establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the Establishment for the purpose of the operation of the Establishment;

(g) A recent passport-type photograph of the applicant(s), and intended operator, the applicant's and intended operator's driver's license number, Social Security number, and any federally issued tax identification number;

(h) Any of items (b) through (g), above shall not be required for a renewal application if the applicant states that the documents previously furnished the Clerk with the original application or previous renewals thereof remain correct and current.

(9) A separate application and permit shall be required for each Sexually Oriented Business.

#### SECTION 11.0: ISSUANCE OF PERMIT AND/OR LICENSE.

(1) The Clerk shall approve the issuance of a permit and/or license to an applicant within forty five (45) days after receipt of an application unless he/she finds one or more of the following to be true:

(a) An applicant is under eighteen (18) years of age.

(b) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has inaccurately answered a question or request for information on the application form.

(c) The applicant has been convicted of a crime, statutory violation or ordinance violation within the previous five years, the nature of which is directly related to the applicant's fitness to engage in the operation of a Sexually Oriented Business, or is a Specified Criminal Activity as defined in this Ordinance.

(d) The premises to be used for the Sexually Oriented Business have not been approved by the Building Inspector and Zoning Administrator as being in compliance with applicable laws and ordinances.

(e) The permit and/or license fee required by this Ordinance has not been paid.

(f) An application of the proposed Establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(g) The applicant has been denied a license by the Village to operate a Sexually Oriented Business within the preceding twelve (12) months or whose license to operate a Sexually Oriented Business has been revoked within the preceding twelve (12) months.

(h) The applicant is overdue in payment to the Village of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(2) The permit and/or license, if granted, shall issue for only one classification of Sexually Oriented Business as found in Subsections 3.1(a) through (l), or 3.2(a) through (c), and shall state on its face the name of the Person or Persons to whom it is granted, the expiration date, and the address of the Sexually Oriented Business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

(3) The Building Inspector and Zoning Administrator shall complete his certification that the premises is in compliance or not in compliance within ten (10) days of receipt of the application by the Clerk. Each certification shall be promptly delivered to the Clerk.

(4) Whenever an application is denied, or a license is not renewed the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within 10 days of receipt of this notification of denial, a public hearing shall be held within 10 days thereafter in conformity with Wis. Stats. section 68.11(2) and (3). A final determination stating the reasons therefore, together with a copy of any official recording or transcript of the hearing, shall be rendered within 20 days of the commencement of the hearing. Judicial review shall be governed by Wis. Stats. section 68.13. If the Clerk determines that an applicant is not eligible for a permit and/or license, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of the application by the Clerk, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than

ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this ordinance.

(5) An applicant denied a permit and/or license by the Clerk may appeal such decision by requesting administrative review of the decision as provided in Chapter 6 of this Code and Chapter 68 of the Wis. Stats.

#### SECTION 12.0: FEES.

(1) Every application for a Sexually Oriented Business license (whether for anew license or for renewal of an existing license) shall be accompanied by a One Hundred (\$100.00) Dollar nonrefundable application and investigation fee.

(2) The annual fee for a Sexually Oriented Business permit and/or license is Four Hundred (\$400.00) Dollars. This fee is to be used to pay for the cost of the administration and enforcement of this ordinance. The fee for partial license years shall be pro-rated on a monthly basis beginning with the first day of the month of issuance.

(3) The fee for a Sexually Oriented Business Employee license is Twenty Five (\$25.00) Dollars, regardless of the date of the application or the duration of the license.

(4) All license applications and fees shall be submitted to the Village Clerk

#### SECTION 13.0: INSPECTION.

(1) An applicant, or permittee and/or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Department, Building and Zoning Department, or other Village or State departments or agencies to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(2) A Person who operates a Sexually Oriented Business or their agent or Employee(s) commits a violation of this Ordinance if he/she refused to permit such lawful inspection of the premises at any time it is open for business.

#### SECTION 14.0: EXPIRATION OF PERMIT AND/OR LICENSE.

(1) Each permit and/or license shall expire June 30 of each year and may be renewed only by making application as provided in Section 10 hereof. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the permit and/or license will not be affected. A license renewal fee of \$400.00 shall be submitted with the



application for renewal. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against any applicant who files for renewal later than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

(2) When the Clerk denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Clerk finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final.

#### SECTION 15.0: REVOCATIONS OR SUSPENSIONS.

(1) The Village may revoke, suspend or refuse to renew any license and/or permit to operate a Sexually Oriented Business as provided for in this subsection.

(a) Any resident of the Village may file a sworn written complaint with the Village Clerk alleging that a Person holding a license and/or permit to operate a sexually oriented business has violated this Code. Upon the filing of the complaint, the Village Board, or a duly authorized committee of the Village Board, shall issue a Summons, signed by the Village Clerk and directed to an approved Person for service. The Summons shall command the licensee or permittee complained of to appear before the Village Board or the designated Committee on a date and place named in the Summons, not less than three days nor more than ten days from the date of issuance, and show cause why his/her/its license or permit should not be revoked or suspended. The Summons and a copy of the Complaint shall be served on the licensee or permittee at least three days before the date at which the licensee/permittee is commanded to appear. Service shall be in the manner provided under Chapter 801, Wis. Stats., for the service and civil actions in Circuit Court.

(b) If the licensee or permittee does not appear as required by the Summons, the allegations of the Complaint shall be taken as true and if the Village Board or designated committee finds the allegations sufficient, the license or permit shall be revoked. The Clerk shall give notice of the revocation to the Person(s) whose license is revoked within 3 days of such determination.

(c) If the licensee or permittee appears as required by the Summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses, and be represented by Counsel. The licensee or permittee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the Village Board and the complaint is found to be true, the license shall be either suspended for not less than 10 days nor more than 90 days, or revoked.

(d) If the hearing is held before a Committee of the Board, the Committee shall submit a report to the Village Board, including Findings of Fact, Conclusions of Law and a recommendation as to what action, if any, the Village Board should take with respect to the license or permit. The Committee shall provide the complainant and the licensee or permittee with a copy of the report. Either the complainant or licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Village Board. The Village Board shall determine whether the argument shall be presented orally or in writing or both. If the Village Board, after considering the Committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report recommending suspension or revocation, the license or permit shall be suspended or revoked as provided herein.

(e) The Village Board shall give notice of each suspension or revocation within 3 days of such determination to the Person(s) whose license or permit is suspended or revoked.

(f) If the Village Board finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. If the Village Board finds the complaint to be malicious and without probable cause, the costs shall be paid by the complainant. The Village Board or the Committee may require the complainant to provide security for such cost before issuing a summons.

(g) When a license or permit is revoked, the revocation shall be recorded by the Clerk and no other license issued under this section may be granted within 36 months of the date of revocation to the Person(s) whose license or permit was revoked. No part of the fee paid for any license so revoked may be refunded.

(h) The Clerk may refuse to renew a license for the causes provided in subsection (1) hereof. Prior to the time for the renewal of the license, the Clerk shall notify the licensee or permittee in writing of his/her intention not to renew the license and provide the licensee or permittee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in Section 11 hereof. If the hearing is held before a Committee of the Village Board, the Committee shall make a report and recommendation as provided under Section 11 hereof, and the Village Board shall follow the procedure specified under that subsection in making its determination.

(i) Grounds for revocation or suspension of a permit and/or license issued under this section shall include but shall not be limited to, the following:

1. a permittee and/or licensee gave false, inaccurate or misleading information in the material submitted during the application process;

2. a permittee and/or licensee or an Employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

3. a permittee and/or licensee or an Employee has knowingly allowed prostitution on the premises;

4. a permittee and/or licensee or an Employee knowingly operated the Sexually Oriented Business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;

5. except in the case of an Adult Motel, a permittee and/or licensee or an Employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other Specified Sexual Activities to occur in or on the permitted and/or licensed premises;

6. the owner or operator of the permitted establishment knowingly allowed a Person under eighteen (18) years of age to enter a Sexually Oriented Business ; or

7. there was a change of owner or operator for which a transfer application was not timely filed.

8. a permittee and/or licensee violated any of the provisions of Sections 12.01(7) or (8) of this Code.

9. Subject to s.s. 111.321, 111.322 and 111.335, Wis. Stats., the applicant, intended operator, or any of the Persons identified in Section 10.3 hereof shall have been convicted of a Specified Criminal Activities within the past five (5) years.

10. A Licensee is delinquent in payment to the Village, County or State for any taxes or fees past due.

(j) When a permit and/or license is revoked, the revocation shall continue for three (3) years, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for three (3) years from the date revocation became effective. If, subsequent to revocation, the Clerk finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

(k) After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit and/or license, the applicant or licensee

or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(l) An existing business may remain open pending the review of license denials and failures to renew, and that all businesses can remain open pending review of suspensions and revocations.

#### SECTION 16.0: TRANSFER OF PERMIT AND/OR LICENSE.

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a Sexually Oriented Business under the authority of a permit and/or license at any place other than the address designated in the application.

#### SECTION 17.0: ADDITIONAL REGULATIONS AND REQUIREMENTS APPLICABLE TO ADULT ENTERTAINMENT ESTABLISHMENTS.

Adult entertainment Establishments shall comply with certain additional restrictions and requirements as set forth below:

(1) Live performances may only occur in a licensed Adult Cabaret or Adult Theater.

(2) It is unlawful for any Person to perform or engage in or for any licensee or manager or agent of a Sexually Oriented Business to permit any Person, Employee, entertainer or patron to perform or engage in any live act or performance that includes or depict any Specified Sexual Activities as the term is defined in Section 2.35 of this Ordinance.

(3) It is unlawful for a Person or for any licensee or manager or agent of a Sexually Oriented Business to permit any Person, Employee or entertainer to exhibit while performing or modeling the Specific Anatomical Areas described in this Ordinance in Section 2.33(a)1, 2.33(a)4 and the anus as included in 2.33(a)2 with a less than complete and opaque covering.

(4) All individuals appearing live and publicly in any Sexually Oriented Business, in s State of Nudity as defined in Section 2.23 yet in compliance with 17.3 of this ordinance shall only appear in such a state of nudity live and publicly on a raised platform or stage that is at least 24 inches above the surrounding floor areas, that is physically separated from any area of such establishment where any members of the public or customers are permitted to sit, stand, move about or dance by a separation zone of no less than three feet of space (measured horizontally from the closest edge of the raised platform

or stage), and a rigid physical barrier not less than 36 inches high at the outer periphery of the separation zone. A customer or member of the public shall not sit, stand, move about or dance within such three foot separation zone while an employee or entertainer appearing in a State of Nudity is appearing live and publicly on stage.

(5) Standard of Conduct for Employees of Adult Cabarets Adult Modeling Studios, and Adult Theaters.

(a) It shall be a violation of this Ordinance for Persons to knowingly and intentionally, in a Sexually Oriented Business appear in a State of Nudity on any part of the premises open to view of members of the public, except on or in the designated entertainment performance area described above.

(b) It shall be a violation of this Ordinance for an Employee, while in a State of Nudity or Semi-Nude in a Sexually Oriented Business, to solicit any pay or gratuity from any patron or customer for any patron or customer to pay or give an gratuity to any Employee, while said Employee is in a State of Nudity or Semi-Nude in a Sexually Oriented Business

(c) It shall be a violation of this Ordinance for an Employee, while in a State of Nudity or Semi-Nude, to touch a customer or member of the public or their clothing, or allow themselves to be touched by a customer or member of the public while on the premises of a Sexually Oriented Business, including during the course of giving or accepting any tip or gratuity. The operator of the Sexually Oriented Business shall also be responsible for enforcement of this provision.

(d) No Employee or holder of a Sexually Oriented Business Employee License shall allow, encourage or knowing permit any Person upon the premises to touch, caress, or fondle their breasts, buttocks, anus, pubic area or genitals of those of any other Person.

(e) An individual who appear live and publicly in a State of Nudity as described in Subsection 17.4 above shall not socialize or mingle with customers or members of the public on the premises of the Sexually Oriented Business, and shall not work as a bartender, waitress, waiter, hostess or host, or in any other capacity in such an establishment that involves direct contact with customer or members of the public during the eight hours immediately before or after so appearing.

(6) Manager on Premises. A manager, who shall be a licensed Employee and not an entertainer shall be on duty at an Adult Cabaret or Adult Theater business premises at all times, and shall verify that any Employee or holder of a Sexually Oriented Business Employee License who works or appears within the premises possess a current and valid

Sexually Oriented Business Employee License posted in the manner required by this Ordinance.

(7) Signs. Signs in lettering at least 3/4 inches high shall be conspicuously displayed in the public area of the Establishment stating the following:

THIS ADULT CABARET IS REGULATED BY THE VILLAGE OF WEST BARABOO, ENTERTAINERS ARE:

(a) Not permitted to engage in any type of sexual conduct;

(b) Not permitted to appear in a State of Nudity, or Semi-Nude, unless on stage; and

(c) Not permitted to dance or model where patrons are congregated.

(8) Additional Restrictions for Adult Modeling Studios

(a) An Adult Modeling Studio shall not employ any Person under the age of 18 years.

(b) A Person under the age of 18 years commits an offense if the Person appears Semi-Nude or in a State of Nudity in or on the premises of an Adult Modeling Studio. It is a defense to prosecution under this subsection if the Person under 18 years was in a restroom not open to public view or visible to any other Person.

(c) Only a holder of a valid Sexually Oriented Business Employee License may appear in a State of Nudity or Semi-Nude on the premises of the Adult Modeling Studio.

(d) Only one model may appear in a State of Nudity or Semi-Nude on the premises at one time.

(e) All modeling must be performed on a stage at least twenty four (24) inches above the floor and with a railing in between the stage and the patrons that is at least thirty six (36) inches above the floor that separates the model from the patrons by a distance of at least five (5) feet.

(f) A Person commits an offense if the Person appears in a State of Nudity, or knowingly allows another to appear in a State of Nudity in an area of a Nude Model Studio premises that can be viewed from the public right-of-way.

(g) All patrons of an Adult Modeling Studio must register for a modeling class at least three calendar days before they may participate in a class or enter the modeling area..

(h) An Adult Modeling Studio shall not place or permit a big, sofa, or mattress in any room on the premises.

(i) An Adult Modeling Studio shall not display any signs visible from the exterior of the structure and no other advertising that indicates a Nude or Semi-Nude Person is available for viewing.

(9) Additional Restrictions for Adult Motels. Evidence that a sleeping room in an motel, hotel, or a similar commercial Establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the Establishment is an adult motel as that term is defined in this chapter.

(a) It is unlawful if a Person, as the Person in control of a sleeping room in a, motel, hotel or similar commercial Establishment that does not have a sexually oriented permit and/or license, rents or sub-rents a sleeping room to a Person and, within ten (10) hours from the time the room is rented, he/she rents or sub-rents the same sleeping room again.

(b) For purposes of subsection 9(a) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

(10) Additional Restrictions for Escort Agencies.

(a) An Escort Agency shall not employ any Person under the age of 18 years.

(b) A Person commits an offense if the Person acts as an Escort or agrees to act as an Escort for any Person under the age of 18 years.

#### SECTION 18.0: REGULATIONS PERTAINING TO EXHIBITION OF ADULT MEDIA.

(1) A Person who operates or causes to be operated a Sexually Oriented Business, other than an Adult Motel, which exhibits on the premises in a viewing room, booth or cubicle of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction that depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(a) Upon application for a Sexually Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Village.

(d) It is the duty of the owners and operator of the premises to ensure that at least one Employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and Employees present in the premises, to ensure that the view area specified in Subsection 1(e) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 1(a) of this section.



(g) No viewing room, booth or cubicle may be occupied by more than one Person at any time. The operator and employees are responsible for enforcement of this provision.

(h) Any viewing room, booth or cubicle used by customers or members of the public for private viewing of adult-oriented materials or media or other similar purposes (but not including a rest room), shall be completely open at one end to the main room or to an interior aisle, shall be situated and arranged so as to be easily inspected, shall contain seating for not more than one individual, shall have walls not less than six feet high without any openings separating it from any adjoining rooms, booth or cubicles or enclosed spaces.

(i) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

(j) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and Employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(k) No Licensee shall allow openings of any kind to exist between viewing Rooms or Booths.

(l) No Person shall make or attempt to make an opening of any kind between viewing Booths or Rooms.

(m) The Licensee shall during each business day, regularly inspect the walls between the viewing Booths to determine if any openings or holes exist.

(n) The Licensee shall cause all floor coverings in viewing Booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(o) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing Booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48) inches of the floor.

(p) A Person having a duty under Subsections (a) through (o) of this Section above commits an offense if he/she knowingly fails to fulfill that duty.

SECTION 19.0: ADDITIONAL REQUIREMENTS APPLICABLE TO LIMITED ADULT MEDIA STORES ONLY.

Adult Media in a Limited Adult Media Store shall be kept in a separate room or section of the shop, which room or section shall:

- (1) not be open to any Person under the age of 18; and
- (2) be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching from the floor to at least eight feet high or to the ceiling, whichever is less; and
- (3) be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and
- (4) have access controlled by electronic or other means to provide assurance that Person under age 18 will not easily gain admission and that the general public will not accidentally enter such room or section, or provide continuous video or window surveillance of the room by store Personnel; and
- (5) provide signage at the entrance stipulating that Person under the age of 18 are not permitted inside.

SECTION 20.0: EXEMPTIONS.

It is a defense to prosecution under this ordinance that a Person appearing in a State of Nudity did so in a modeling class operated:

- (1) by a proprietary school, licensed by the State of Wisconsin; a college, junior college, or university supported entirely or partly by taxation;
- (2) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 21.0: PENALTIES.

Any Person who shall violate any provision of this section 12.09, or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Sec. 25.04 of this Code and any Person who operates or causes to be operated a Sexually Oriented Business without a valid permit and/or license or otherwise violates this ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

(1) Any Person who violates any of the provisions of this Ordinance shall be subject to a forfeiture of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this Ordinance constitutes sufficient grounds for suspending, revoking, or non-renewal an alcohol beverage license under Wis. Stat. section 125.12.

(2) A Person who operates or causes to be operated a Sexually Oriented Business without a valid license or in violation of any section of this Ordinance is subject to suit for injunction as well as prosecution for violations of such ordinance. Such violations shall be punishable by a forfeiture of two hundred dollars (\$200.00) plus costs. Each day a Sexually Oriented Business so operates is a separate offense or violation.

(3) The remedies found in this Ordinance are not exclusive, and the Village may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulation herein adopted.

#### SECTION 22.0: SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof.

#### SECTION 23.0: EFFECTIVE DATE.

This Ordinance shall take effect and be in force from and after its passage and publication, as provided by law.